

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

In re: BAYCOL PRODUCTS LITIGATION)	MDL No. 1431
)	(MJD/JGL)
This Document Relates To:)	
)	
All Actions)	

THE PARTIES' STATUS REPORT AND PROPOSED AGENDA

July 20, 2004

The parties herewith submit the following Joint Status Report and Agenda for the hearing on June 22, 2004.

I. Pending Cases

A. As of July 15, 2004, defendants have been served with 7,259 cases that remain active. Of that total, 5,853 cases are pending in federal court and 1,406 cases are pending in state courts.

B. As of the last status conference in April, 2004, defendants had been served with 7,642 cases that were active. Of that total, 6,046 cases were pending in federal court and 1,596 cases were pending in state court. Filed but unserved cases were not included in these totals.

C. An updated list of plaintiffs' counsel in pending cases has been provided to the PSC.

II. Settlement

A. To date, Defendants have settled 2,794 cases with a total value of \$1,069,400,136.

Of this total, 685 cases have been determined to be subject to the MDL assessment, with a total value of \$236,439,607.

B. As of the last status conference, Defendants had settled 2,716 cases with a total value of \$1,043,919,200. Of this total, 675 cases had been determined to be subject to the MDL assessment, with a total settlement value of \$234,259,607.

C. Approximately 128 cases have been submitted to the MDL mediation process. Special Master Remele will report. In addition to the mediation program, the PSC is continuing to negotiate a limited number of cases directly with Bayer.

D. The PSC is increasingly concerned with the process of lump sum settlements with counsel, resolving groups or inventories of cases. The PSC believes that information about the individual value of settlements should be shared and made public. The PSC would like the matter referred to Special Master Remele for review and recommendation. Defendants believe they have acted properly with respect to settlements. In any event, the PSC has not conferred with Defendants about this matter; Defendants, therefore, believe the matter is not ripe for hearing or referral to the special master.

III. Discovery

A. The first deadline for submitting reports under PTO 114 passed on June 7, 2004. Cases subject to this deadline had file numbers in the range of 01-1594 to 02-4433. There were approximately 1910 plaintiffs subject to this deadline. Of these plaintiffs, 1259 were granted extensions, leaving 651 plaintiffs subject to the June 7 deadline. As of July 14, defendants had received submissions from 261 of these plaintiffs, 136 served letters with medical records and 125 served case-specific expert reports. Defendants believe that the expert reports submitted on

pre-printed forms do not comply with PTO 114 and have filed a motion to compel compliance with the order. Defendants also have received an additional 109 submissions that were due later than June 7 (whether by extension or by the terms of PTO 114) – of which 24 were letters with medical records and 85 were reports. In accordance with PTO 127, the parties are now in the process of categorizing all PTO 114 submissions submitted on or before June 28, 2004. The parties will be discussing this and other PTO 114 implementation issues with Special Masters Haydock and Remele on Monday, July 19. Deadlines for reports in the second (case file numbers 02-4434 to 03-2581) and third (case file numbers 03-2583 to 04-1312) rounds are July 30, 2004 and September 20, 2004.

B. The Pennsylvania state court has required plaintiffs to submit case specific expert reports for non-rhabdo cases. Of the 3,400 cases subject to the Pennsylvania deadlines, only 271 active cases remain pending.

C. Bayer and Bayer AG recently produced more than 60 CDs of documents, including documents for people previously deposed. Defendants note that most of these documents are duplicates of documents previously produced. Subsequent to the document production, the PSC re-noticed or noticed the depositions of certain Bayer AG employees. The PSC and defendants are engaged in discussions regarding these matters.

D. Bayer has completed production of its re-designation of confidential documents. GSK is in the process of producing the last of its confidential documents. The PSC will shortly be filing a motion relating to the costs of this redesignation. Defendants expect to oppose any such motion.

E. Before the Court is the PSC's request for letters rogatory. Defendants have

moved to quash. Plaintiffs oppose the motion and will respond in due course. The matter will be argued at the September status conference.

F. The PSC has filed a motion to compel Defendants to produce the list of former sales persons to whom PTO 6 has been mailed. Defendants have filed a brief in opposition. This motion will be argued before Chief Magistrate Judge Lebedoff on July 27, 2004.

G. The parties have served their initial designations of generic experts pursuant to PTO 120. Defendants have requested plaintiffs to produce videotapes involving certain of plaintiffs' experts. Plaintiffs have refused on the basis that such videotapes were prepared pursuant to the Courts interest in a science and medicine tutorial. Defendants will be moving to compel.

IV. Motions

A. The following motions are in the process of being briefed:

1. Defendants' motion to quash the PSC's request for letters rogatory.
2. Defendants' motion to compel production of expert reports pursuant to PTO 114.
3. Motions of several plaintiffs for relief from PTO 114.

B. As noted above, the following motion has been referred to Magistrate Judge Lebedoff:

1. Plaintiffs' Motion to Compel Production of Detail Sales Representative Mailing

V. Trial Settings and Remand Issues

A. There are presently no trial settings for cases in the MDL.

B. A list of state court trial settings has been provided to the Court and the PSC.

C. As noted above, the PSC, Defendants, and Special Masters Haydock and Remele are meeting on Monday, July 19, to discuss categorization of cases pursuant to PTO 114. The parties and Special Masters will have a report for the Court.

VI. Liaison Advisory Committee/Special Masters' Report

A. European expense sharing issue.

Respectfully submitted,

s/Charles S. Zimmerman

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CERTIFICATE OF SERVICE

I, Rebecca Ostlund, certify that a true and correct copy was electronically served to counsel of record via Verilaw on July 19, 2004.

/Original Signature on File/

Rebecca Ostlund